

REMARKS

Claims 1-20 are pending and stand rejected. Claims 1 -14 are amended. Support for the amendment can be found, for example, at paragraphs [0006] and [0028] of the Specification.

Applicants have thoroughly reviewed the Office Action including the Examiner's remarks and the references cited therein. The following remarks are believed to be fully responsive to the Office Action. All the pending claims at issue are believed to be patentable over the cited references.

REJECTION UNDER 35 U.S.C. § 112

Claims 1-13 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. In addition, claims 1-13 stand rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Applicants have amended claim 1 to address these rejections. Applicants submit that the rejections under 35 U.S.C. §112 have been overcome and should be withdrawn.

REJECTION UNDER 35 U.S.C. §103

Claims 1-20 stand rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent Application Publication No. 2003/0215357 to Malterer *et al.* ("Malterer") in view of U.S. Patent No. 6,659,637 to Friedman ("Friedman"). To establish a *prima facie* case of obviousness, the Examiner must demonstrate some suggestion or motivation to combine one or more references, with a reasonable expectation of success, to teach each and every claimed limitation. MPEP §2142. Applicants submit that the Examiner has failed to meet this burden.

Claims 1 recites “at least one specimen storage device *disposed within an incubator workspace*” (emphasis added). See also Specification, Paragraph [0025]. Claim 1 further recites that the specimen storage device includes “a plurality of superposed specimen storage spaces...wherein each of the superposed specimen storage spaces comprises: a specimen storage position; a horizontally disposed and individually controllable shaking platform; and a base unit.” See also, FIG. 2.

Malterer, on the other hand, teaches a modular shelf support structure (100) into which a plurality of discrete shelf modules (*i.e.*, 200A, 400A, 600A, 800A) serving various distinct functions may be installed. The Office Action states that Malterer teaches that certain shelf modules may incorporate shakers, such as shakers according to Friedman. Office Action, ¶6. Malterer does not teach, however, that the shaker shelf modules may be installed in an incubator workspace as recited in claim 1. In fact, Malterer draws a clear distinction between shaker shelf modules, which are included in a class referred to therein as “instrumentation shelf modules (200A) and (200B),” and incubators, which are described therein as “storage shelf modules (800A) and (800B),” Malterer, Paragraphs [0087] and [0076], respectively. Nowhere does Malterer teach or suggest a *single* shaker, much less *multiple* shakers, installed in an incubator as recited in claim 1. Nor does Friedman provide such a teaching. Accordingly, the asserted combination of references fails to teach each and every element recited in claim 1, and therefore does not establish a *prima facie* case of obviousness thereof.

Claims 2-13 depend from claim 1, and are not *prima facie* obvious for at least the same reasons. Applicants accordingly earnestly solicit withdrawal of the rejection of claims 1-13.

Regarding claim 14, claim 14 recites:

A shaking unit, comprising:

a base;

a shaking platform coupled to the base;

a spacer disposed above and coupled to the shaking platform;

a clamping element disposed above and coupled to the spacer; and

a specimen storage unit disposed above and removably coupled to the clamping element,

wherein the specimen storage unit is configured to house at least a plurality of specimens.

Malterer does not teach such a shaker unit. Nor does the shaker unit according to Friedman teach the recited structure. In particular, the shaker unit according to Friedman lacks “a spacer disposed above **and coupled to** the shaking platform,” and therefore necessarily also lacks “a clamping element disposed above **and coupled to** the spacer.” Nor does Friedman teach “a specimen storage unit disposed above **and removably coupled to** the clamping element[.]” In fact, the only clamping element disclosed in Friedman, clamping assembly 60, is disposed *above* the specimen storage unit (multi-tube rack 50)—the opposite of the configuration recited in claim 14. Friedman, Col. 7, Lines 26-39. Accordingly, the asserted combination of references fails to teach each and every element of claim 14, and therefore cannot render the same *prima facie* obvious.

Claims 15-20 depend from claim 14 and are allowable for at least the foregoing reasons. Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection of claims 14-20.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants respectfully submit that the application is in condition for allowance, and request that all objections and rejections be withdrawn, that all pending claims be allowed, and that the application be passed to issue. If, for any reason, the Examiner finds the application to be in other than condition for allowance, the Examiner is invited to contact the undersigned on 202.861.1683 in an effort to resolve any matter still outstanding before issuing another action.

In the event any extensions of time are required for this paper to be considered timely, Applicants hereby make a conditional petition therefor. Please charge any fee deficiencies and credit any overpayments to Deposit Account No. 50-2036 with reference to Attorney Docket No. 87333.3301.

Respectfully submitted,
BAKER & HOSTETLER LLP



Annette K. Kwok
Reg. No. 58,278

Date: October 24, 2006
Washington Square, Suite 1100
1050 Connecticut Avenue, NW
Washington, DC 20036-5304
Telephone: 202-861-1500
Facsimile: 202-861-1783